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IN THE CIRCUIT COURT OF THE  
17TH JUDICIAL CIRCUIT IN AND  
FOR BROWARD COUNTY, FLORIDA

CASE NO. 97-018445 CA (13)

MARK GINSBURG, M.D.; et al,

Plaintiffs,

vs.

GAMBRO AB and  
COBE LABORATORIES, INC.

Defendants.

FIFTH AMENDED COMPLAINT

Plaintiffs, MARK GINSBURG, M.D., et al, for their Complaint against Defendants GAMBRO AB and COBE LABORATORIES, INC., state and allege as follows (case is summarized in paragraphs 52-57 below):

1. This Fifth Amended Complaint succeeds the Fourth Amended Complaint and is filed pursuant to this Court's April 17, 2001 Order granting Plaintiffs' Motion for Leave to File a Claim for Punitive Damages, as well as this Court's May 14, 2001 Order granting Plaintiffs' Motion for Leave to Assert a Claim for Rescissory Damages, and Plaintiffs' Motion for Leave to Amend to add two new Plaintiffs.

PARTIES

2. Mark Ginsburg, M.D., a resident of Palm Beach County, Florida, is suing as an owner of Ren Corporation-USA ("Ren") stock

in 1995, and, with his spouse, Anne Ginsburg, in their capacities as the trustees and the beneficiaries/recipients under the Mark C. Ginsburg and Anne V. Ginsburg Charitable Remainder Unitrust, which also owned Ren stock in 1995. There is an identity of interest between Mark Ginsburg and Mark Ginsburg and Anne Ginsburg in their capacities as the trustees and the beneficiaries of the aforementioned trust. They are suing as owners together of a total of 401,500 shares of Ren stock in 1995, the year the events in issue took place.

3. Robert Sonnenborn, a Florida resident, is suing as an owner of 20,000 shares of Ren stock in 1995. He first discovered the facts giving rise to these causes of action in September, 2000.

4. Shelly Skolnick, a Florida resident, is suing as an owner of 4,000 shares of Ren stock in 1995. She first discovered the facts giving rise to these causes of action in September, 2000.

5. Owen Rheingold, a Florida resident, is suing as an owner of 10,000 shares of Ren stock in 1995. He first discovered the facts giving rise to these causes of action in September, 2000. He also is suing as trustee of the Rachel Rheingold Trust, owner of 500 shares of Ren stock in 1995, and as trustee of the Alyssa Rheingold Trust, owner of 500 shares of Ren Stock in 1995.

6. Gastroenterology Consultants, a Florida corporation, is suing as an owner of 2,500 shares of Ren Stock. It first discovered the facts giving rise to these causes of action in September, 2000.

7. Robert Janda, a Florida resident, is suing as an owner of 238 shares of Ren Stock. He first discovered the facts giving rise to these causes of action in September, 2000.

8. Betty Ginsburg, a Florida resident, is suing as trustee of the Betty Ginsburg Trust, owner of 85,000 shares of Ren stock in 1995. She first discovered the facts giving rise to these causes of action in September, 2000.

9. Ira Pardo, a Florida resident, is suing as owner of 120,000 shares of Ren stock in 1995. He first discovered the facts giving rise to these causes of action in September, 2000.

10. Robert Colton, a Florida resident, is suing as owner of 12,000 shares of Ren stock in 1995. He first discovered the facts giving rise to these causes of action in September, 2000.

11. Eric Chazen, a Tennessee resident, is suing as owner of 10,000 shares of Ren Stock. He first discovered the facts giving rise to these causes of action in September, 2000.

12. Sylvia Weinberger, a Tennessee resident, is suing as administrator of the estate of Sherron Weinberger, owner of 100,000 shares of Ren stock in 1995. She first discovered the facts giving rise to these causes of action in September, 2000.

13. Robert Faber, a Tennessee resident, is suing as owner of 51,500 shares of Ren stock in 1995. He first discovered the facts giving rise to these causes of action in September, 2000.

14. Tom Faber, a Tennessee resident, is suing as owner of 11,000 shares of Ren stock in 1995. He first discovered the facts

giving rise to these causes of action in September, 2000.

15. Darlene Ginsberg, a Tennessee resident, is suing as owner of 53,500 shares of Ren stock in 1995. She first discovered the facts giving rise to these causes of action in September, 2000.

16. Jeff Hymes, a Tennessee resident, is suing as owner of 180,000 shares of Ren stock in 1995. He first discovered the facts giving rise to these causes of action in September, 2000.

17. Alex Hong, a Tennessee resident, is suing as owner of 2,000 shares of Ren stock in 1995. He first discovered the facts giving rise to these causes of action in September, 2000.

18. J. Kenneth Jacobs, a Tennessee resident, is suing as owner of 65,000 shares, and 20,000 options, in Ren stock in 1995. He first discovered the facts giving rise to these causes of action in September, 2000.

19. Jacobs Partners, a Tennessee partnership, is suing as owner of 27,500 shares of Ren stock in 1995. It first discovered the facts giving rise to these causes of action in September, 2000.

20. Jacqueline Karr, a Tennessee resident, is suing as trustee of the Morgan Karr Trust, owner of 2,000 shares of Ren stock in 1995. She first discovered the facts giving rise to these causes of action in September, 2000. She also is suing as trustee of the Price Karr Trust, owner of 2,000 shares of Ren stock in 1995.

21. Joseph Mulherin, a Tennessee resident, is suing as owner of 20,000 shares of Ren stock in 1995. He first discovered the

facts giving rise to these causes of action in September, 2000.

22. P/S Midstates Urology, a Tennessee corporation, is suing as an owner of 57,000 shares of Ren stock in 1995. It first discovered the facts giving rise to these causes of action in September, 2000.

23. James Schulman, a Tennessee resident, is suing as owner of 10,000 shares of Ren stock in 1995. He first discovered the facts giving rise to these causes of action in September, 2000.

24. Jerome Tannenbaum, a Tennessee resident, is suing as owner of 50,000 shares of Ren stock in 1995. He first discovered the facts giving rise to these causes of action in 1999.

25. Miriam Weinstein, a Tennessee resident, is suing as owner of 3,500 shares of Ren stock in 1995. She first discovered the facts giving rise to these causes of action in September, 2000.

26. Albert Isenhour, a Tennessee resident, is suing as owner of 48,000 shares of Ren stock in 1995. He first discovered the facts giving rise to these causes of action in September, 2000.

27. Karen Ginsberg King, a Tennessee resident, is suing as owner of 27,500 shares of Ren stock in 1995. She first discovered the facts giving rise to these causes of action in September, 2000.

28. Kevin O'Brien, a Tennessee resident, is suing as owner of 1,000 shares of Ren stock in 1995. He first discovered the facts giving rise to these causes of action in September, 2000.

29. Betty Ginsberg Anderson, a Tennessee resident, is suing as owner of 2000 shares of Ren stock in 1995. She first discovered

the facts giving rise to these causes of action in September, 2000.

30. Norman Ginsberg, a Tennessee resident, is suing as owner of 22,000 shares of Ren stock in 1995. He first discovered the facts giving rise to these causes of action in September, 2000.

31. Harold Hymes, a New York resident, is suing as owner of 2,000 shares of Ren stock in 1995. He first discovered the facts giving rise to these causes of action in September, 2000.

32. Andrew Rheingold, a New York resident, is suing as owner of 500 shares of Ren stock in 1995. He first discovered the facts giving rise to these causes of action in September, 2000.

33. John Pearson, a Tennessee resident, suing as owner of 438,000 shares of Ren stock in 1995. He first discovered the facts giving rise to these causes of action in September, 2000.

34. Oscar Spivey, M.D., a Tennessee resident, suing as an owner of shares of Ren stock in 1995. He first discovered the facts giving rise to these causes of action in September, 2000.

35. Rajeswari Krishna, a Tennessee resident, suing as an owner of shares of Ren stock in 1995. He first discovered the facts giving rise to these causes of action in September, 2000.

36. Morton Levy, a New York resident, suing as an owner of 1,000 shares of Ren stock in 1995. He first discovered the facts giving rise to these causes of action in September, 2000.

37. Stanley Lee, a Tennessee resident, suing as owner of 10,000 shares of Ren stock in 1995. He first discovered the facts

giving rise to these causes of action in September, 2000.

38. Patricia Swift, a Georgia resident, suing as owner of 2,200 shares of Ren stock in 1995. She first discovered the facts giving rise to these causes of action in September, 2000.

39. Robert Swift, a Georgia resident, suing as owner of 1,150 shares of Ren stock in 1995. He first discovered the facts giving rise to these causes of action in September, 2000.

40. Benjamin Alper, a Tennessee resident, suing as owner of 21,800 shares of Ren stock in 1995. He first discovered the facts giving rise to these causes of action in September, 2000.

41. Bruce Pomerantz, suing as trustee of the Benjamin Alper Charitable Remainder Unit Trust, owner of shares of Ren stock in 1995. He first discovered the facts giving rise to these causes of action in September, 2000.

42. Bruce Pomerantz, suing as trustee of the Benjamin Alper Remainder Annuity Trust, owner of shares of Ren stock in 1995. He first discovered the facts giving rise to these causes of action in September, 2000.

43. Vanderbilt University, a Tennessee resident, suing as owner of 39,600 shares of Ren stock in 1995. They first discovered the facts giving rise to these causes of action after September, 2000.

44. Marc Weinberg, M.D., a Rhode Island resident, suing as owner of shares of Ren stock in 1995. He first discovered the facts giving rise to these causes of action in September, 2000.

45. Maurice Karr, M.D., a Florida resident, suing as owner of 15,000 shares of Ren stock in 1995. He first discovered the facts giving rise to these causes of action in September, 2000.

46. Defendant Gambro AB ("Gambro") is a Swedish company in Lund, Sweden. Gambro, together with its wholly-owned subsidiaries, is mainly engaged in the operation of dialysis clinics in the United States and Europe, and in the design, development, production, distribution, sale, and service of systems and products for renal care including kidney dialysis, cardiovascular surgery, blood component technology, and intensive care and anesthesia.

47. Defendant Cobe Laboratories, Inc. ("Cobe"), is a Colorado corporation with offices at 1185 Oak Street, Lakewood, Colorado 80215. Cobe manufactures and distributes medical supplies and equipment used in nephrology, including kidney dialysis; in cardiovascular surgery; and in blood component therapy. Cobe is a wholly-owned subsidiary of Gambro.

#### ADDITIONAL ACTORS

48. Mats Wahlstrom ("Wahlstrom"), from May 1991 through the relevant period, was a Ren director, and in 1995 was chairman of the board of Ren. From 1985 through 1993 he was also chief financial officer of Gambro, and from March 1993 through the relevant period was executive vice president of Gambro. In June 1990, Wahlstrom was elected a director of Cobe and appointed its executive vice president. From May 1991 through the relevant



period he was president of Cobe. Wahlstrom ceased employment and affiliation with any and all Gambro entities on or about February 23, 2000.

49. Herbert Lawson ("Lawson"), from October 1992 through the relevant period, was a Ren director. In the relevant period he was also vice president, chief financial officer, and treasurer of Cobe. Lawson ceased employment with Cobe in 1998.

50. Jan Gustavsson ("Gustavsson"), from April 1993 through the relevant period, was a Ren director. From March 1993 through the relevant period Gustavsson was also chief financial officer of Gambro.

51. The former Ren Corporation-USA ("Ren"), renamed Gambro Healthcare Patient Services, Inc. in 1996, and now known as Gambro Healthcare, Inc., is a wholly-owned subsidiary corporation of Cobe and indirect wholly-owned subsidiary of Gambro. Gambro Healthcare is the successor to Ren. Pursuant to a tender offer commenced in September, 1995, the outstanding stock of Ren was purchased by Cobe through its wholly-owned subsidiary, REN Acquisition Corp., which then merged into Ren, making Ren a wholly-owned subsidiary of Cobe. Ren, now Gambro Healthcare, is organized and existing under the laws of the State of Tennessee with its principal executive offices located in Nashville, Tennessee; is a major provider of kidney dialysis treatment in the United States and Europe, including in Florida and South Florida; provides kidney dialysis treatment services to patients in their homes and in-patient services through

contracts with hospitals; and, finally, owns a clinical laboratory that performs blood and urine testing for its dialysis treatment centers and for independent dialysis facilities and physicians.

#### CASE SUMMARY

52. This case arises from a large-scale fraud perpetrated in 1995 by Gambro and its wholly-owned subsidiary, Cobe, the majority owner of Ren. Gambro and Cobe manipulated and artificially depressed the price of the stock of Ren in 1995 in connection with a Cobe tender offer purchase of Ren's minority-owned shares, thereby defrauding and breaching fiduciary duties to Ren's minority stockholders, including Plaintiffs.

53. Before the tender offer, without disclosing it to the minority shareholders, Cobe and Gambro on Ren's behalf had planned an acquisition to be made by Ren of another major dialysis treatment company, American Outpatient Services Corp. ("AOSC"). Cobe on Ren's behalf entered into agreements with AOSC before the tender offer confirming their intention that Ren acquire AOSC. At the time of tender offer, acquiring AOSC would have increased Ren's size and projected annual revenue by approximately 30 percent.

54. If disclosed in the tender offer, the planned AOSC acquisition would have increased the value of Ren's stock and thus the price that Gambro and Cobe would have had to pay to Ren's minority shareholders in the tender offer. Instead of disclosing the expected acquisition of AOSC, Cobe and Gambro

intentionally and fraudulently concealed it from Ren's minority shareholders, and from persons who had responsibility for protecting the minority shareholders' interests in the tender offer, including members of the Ren board other than those affiliated with Cobe and Gambro, the members of the special committee of the Ren board appointed to consider Cobe's tender offer proposal, and the special committee's financial advisors and legal advisors. Cobe and Gambro even kept the planned AOSC acquisition secret from Ren's president.

55. The Plaintiff minority shareholders were thus denied the true and full value of their equity investment in Ren when they transferred their shares in the Cobe tender offer. Cobe and Gambro engaged in acts of fraud, self-dealing, unfair dealing, gross overreaching, breaches of fiduciary duties, conspiracy, and affirmative acts of fraudulent concealment of their unlawful conduct, all in a successful effort to purchase Ren shares at a price significantly below their true value. Plaintiffs were harmed and are entitled to recover substantial damages for Cobe and Gambro's egregious conduct.

56. The plaintiff shareholders all held stock in Ren at the time of the Cobe tender offer on September 19, 1995, and sold or transferred their stock in Ren pursuant to the tender offer.

57. Many of the Plaintiffs, in addition to being Ren shareholders, were personal and significant contributors to the growth and expansion of Ren from its inception in the 1980's



their clinics. Cobe purchased 2.2 million shares of Ren.

61. Gambro and Cobe announced their initial purchase of Ren stock as "an important step in the [Gambro] Group's strategy of forward integration."

62. Forward integration means to own the business that uses one's product, in order to assure a market for the product. Gambro wanted an ownership stake in the kidney dialysis treatment business to help guarantee a market for the dialysis equipment and supplies they manufactured, and to take advantage of lucrative financial returns available in the dialysis treatment business.

63. Cobe/Gambro built their ownership stake in Ren to a majority position by mid-1992. On February 9, 1992, Cobe purchased 1.1 million additional shares, and on July 2, 1992, Cobe purchased 5.5 million Ren shares, giving Cobe/Gambro a majority stake in Ren. At the time of the events relevant to this suit in 1995, Cobe owned 10,036,221 shares, or 53 percent of Ren's outstanding stock.

#### COBE/GAMBRO'S CONTROL OF REN

64. After obtaining majority ownership of Ren in 1992, Cobe/Gambro was able to select a majority of the members of Ren's Board of directors and thus controlled the Ren board.

65. Along with assumption of majority shareholder status and control of Ren's board, Cobe and Gambro assumed fiduciary duties of good faith, loyalty, honesty, fair dealing, due care and candor to Ren minority shareholders, including the Plaintiffs.

66. Cobe and Gambro did not hesitate to flout these fiduciary

obligations after gaining control of Ren.

67. In 1993 Gambro and Cobe took their first significant steps towards excluding Ren minority shareholders from participating in the fruits of the Gambro strategy to make dialysis treatment an important part of Gambro's business.

68. In December 1993 the Cobe/Gambro-controlled Ren board caused Ren to approve entry by Gambro's wholly-subsidiary, Cobe, into the dialysis treatment business in competition with Ren, to the obvious detriment of Ren's minority shareholders.

69. On December 2, 1993, at a Ren board meeting, Mats Wahlstrom, Ren board chairman and president of Cobe, approached Ren's president, Lawrence Centella, on a break shortly before going back into the meeting. Wahlstrom revealed to Centella that when the meeting reconvened he was going to present to the Ren board a plan under which Cobe would participate in a business venture to provide dialysis treatment, and would ask the Ren board to approve the plan. Cobe would establish and invest in a company, subsequently called Renal Management Applications (RMA), to do this dialysis treatment business. This venture would violate Cobe/Gambro's duties of loyalty to Ren and their duties to present to Ren opportunities that fell within Ren's area of business, kidney dialysis treatment. Cobe also was bound under a specific non-competition agreement with Ren relating to providing dialysis treatment.

70. Centella responded to Wahlstrom before reconvening the

meeting:

I became quite upset and asked him, why are you doing this? I mean this is REN's business, not COBE's business. And [Wahlstrom] just said, well, we had an opportunity to sell them equipment, and so we're going to fund that portion of it. And he thought it was a good deal because he was able to secure this option to acquire at a certain price, if I remember correctly. And I, again, let it be known to him, you know, I really didn't appreciate that.

71. Ignoring Centella's protest, Wahlstrom reconvened the board meeting and announced Cobe's plan to participate in the competing dialysis treatment business venture. Cobe's plan was approved by unanimous vote of the Ren board. The unanimous approval included a vote to waive the proscriptions in the Ren-Cobe noncompetition agreement against Cobe competing with Ren. The Cobe designees on the Ren board abstained.

72. The non-Cobe-affiliated Ren directors felt powerless to do anything but to go along with the proposal by Wahlstrom, who was the Ren Chairman and the majority owner's principal representative on the Ren board.

73. The control by Cobe/Gambro of the Ren board, abused by Cobe/Gambro to the detriment of Ren and its minority shareholders in 1993 and 1994 in connection with Gambro's expansion of its competitive presence in the dialysis treatment area, continued in 1995.

GAMBRO'S EXPANSION PLANS FOR REN IMPLEMENTED  
IN 1995 TO COMPETE IN A RAPIDLY CONSOLIDATING  
DIALYSIS INDUSTRY

74. By 1995 Gambro's objective to expand its dialysis treatment business had become more pressing. Gambro had determined in 1993 to make dialysis treatment, through Ren, one of two or three "core businesses" in the multibillion-dollar global Gambro enterprise. There also was a mindset within Gambro in 1995 to implement growth plans in the dialysis treatment area at any cost, or risk one of Gambro's competitors cornering the dialysis market. Thus Gambro in 1995 was intent on aggressively expanding its dialysis treatment business, i.e., "forward integrating".

75. Herbert Lawson, Cobe vice-president and chief financial officer, and Ren board member in 1995, has testified:

There was a mentality during that time frame [1995] throughout the industry to grow. And I would not limit this comment to any considerations within GAMBRO [AB]. I think it was kind of an industrywide situation. The mentality almost became grow at whatever costs you can grow at, because there was a very great concern that one particular competitor or the other might eventually corner the market, if you will.

76. This mentality explains at least in part Cobe/Gambro's tender offer/merger acquisition of 100 percent of Ren in 1995. Mats Wahlstrom, Gambro vice-president and Cobe president, stated in a July 13, 1995, meeting of the Ren board convened to hear Cobe's tender offer proposal that the proposal was intended "to enable Ren to expand rapidly within the healthcare industry especially in light of the increased rate of consolidation in the industry."



Gambro called the acquisition of 100 percent of Ren "a further step in our strategy of forward integration in the Renal Care [dialysis treatment] business segment." It recognized "the clear trend in our business environment toward totally integrated dialysis companies."

77. The tender offer buyout of the minority shareholders also ensured that Gambro alone (including Cobe), to the exclusion of Ren's minority shareholders, would enjoy the fruits of Ren's expansion.

COBE/GAMBRO'S UNDISCLOSED PLAN FOR REN  
TO EXPAND BY ACQUIRING AOSC, A MAJOR  
DIALYSIS TREATMENT PROVIDER

78. Having determined in 1995 to acquire 100 percent of Ren and to expand Ren aggressively to compete in a consolidating dialysis industry, Gambro and Cobe faced a dilemma. In 1995 Ren was a public company. Under applicable law it would take several months to complete a tender offer and merger with Ren. If Gambro had made Ren grow quickly in the Summer of 1995, Ren as a public company would be required to disclose it to its shareholders in connection with a tender offer. This would result in a higher valuation of the stock in conjunction with the tender offer, increasing the price that Gambro/Cobe would have to pay the minority shareholders on a per share basis.

79. In 1995 Ren had approximately 9,544,838 minority-owned shares, stock options and stock warrants. Each dollar added to any valuation of the Ren minority shares would increase by at least

\$9,544,838 the cost to Cobe/Gambro of the tender offer.

80. Gambro's solution to its dilemma in 1995 was simple: Begin implementing aggressive expansion plans for Ren promptly, but conceal them from Ren's minority shareholders until completion of the tender offer and the Gambro/Cobe takeover of 100 percent ownership of Ren.

81. Gambro proceeded as follows. Gambro through Cobe searched for a major dialysis treatment provider or providers for Ren to acquire. As a private company, Cobe was more able than Ren to act and enter into agreements with potential acquisition targets without having to make public disclosures about it. Thus Cobe served as a stalking horse for what ultimately would be an acquisition by Ren of a major dialysis treatment provider.

82. The target Cobe focused on for Ren was American Outpatient Services Corp. ("AOSC"). AOSC was a major privately-held provider of kidney dialysis treatment in 1995. AOSC dialysis treatment clinics served approximately 1450 patients, making it roughly 30 percent of the size of Ren in 1995 and one of the largest privately-held dialysis treatment provider companies in the United States.

83. Although Ren previously had completed numerous acquisitions of dialysis treatment providers, mostly individual clinics or small groups of clinics, AOSC bore no relation to them in terms of size. AOSC represented the largest acquisition by far of a dialysis treatment provider in Ren's history.

84. AOSC's chief executive and majority shareholder were the same person, Dr. Lawrence Spira. This enhanced Cobe's ability to have confidential discussions with AOSC on Ren's behalf which would remain undisclosed to Ren's minority shareholders.

85. Plaintiffs do not allege that AOSC, Dr. Spira, or any other AOSC representatives were complicit in any of Cobe or Gambro's actions that form the basis for this suit. In 1995 AOSC was simply a major privately-held kidney dialysis treatment provider ready to sell and looking for a buyer.

86. The AOSC acquisition was the key component in Gambro's dialysis-treatment growth strategy through Ren in the United States in 1995. Wahlstrom stated upon completion of the Ren acquisition of AOSC that "The acquisition of AOSC is an important milestone in GAMBRO's U.S. growth strategy."

**IMPLEMENTATION OF GAMBRO/COBE'S UNDISCLOSED  
PLAN FOR REN TO ACQUIRE AOSC**

87. Gambro through Cobe implemented their AOSC acquisition plan as follows. In the Summer of 1995, well before the tender offer for Ren on September 19, 1995, Wahlstrom contacted Dr. Spira, AOSC's chairman and principal shareholder, to express serious interest in an acquisition of AOSC.

88. Though Wahlstrom was Cobe's president and Gambro's executive vice-president in 1995 as well as Ren's board chairman, Wahlstrom has testified that in all his contacts with AOSC relative to acquiring AOSC, he was acting on behalf of Ren.

89. Wahlstrom has testified that Cobe never had an interest itself in acquiring AOSC. Cobe's role in communicating through Wahlstrom with AOSC's representatives was always and only as a proxy for Ren and on Ren's behalf. Only Ren, and no other entity within the Gambro corporate family, would acquire AOSC, Wahlstrom states.

90. Before Wahlstrom's approach to AOSC, potential acquisitions for Ren typically had been pursued by Ren's executive vice-president for business development, Milton S. ("Steve") Harrison. Harrison was not asked to participate in the discussions with AOSC and was never informed or consulted about the acquisition of AOSC, even though Harrison held the position of Ren executive vice-president for business development until completion of the Cobe/Gambro 100 percent takeover of Ren in November of 1995.

91. On July 6, 1995, pursuant to Wahlstrom's initial discussions with AOSC'S Dr. Spira, a Confidentiality Agreement (hereafter, "AOSC Confidentiality Agreement") was entered into by AOSC and Cobe, with Wahlstrom signing as president of a Cobe entity named "COBE Renal Care, Inc." The AOSC Confidentiality Agreement provided for Cobe to obtain information in confidence about AOSC relevant to a potential acquisition of AOSC.

92. Although the purpose of the AOSC Confidentiality Agreement was to obtain information relevant to a potential acquisition of AOSC by Ren, the Agreement barred disclosure of information about AOSC to any Ren personnel other than Wahlstrom

and fellow Ren board member and Cobe chief financial officer, Herbert Lawson.

93. The AOSC Confidentiality Agreement did permit disclosure to the Ren Board of Directors "on a confidential basis". However, none of the non-Cobe-affiliated Ren board members, including Drs. Jacobs or Kokko, or Lawrence Centella (Centella was also Ren's president and chief executive officer) were ever informed of the planned AOSC acquisition until after the Cobe tender offer for Ren and Cobe/Gamero's acquisition of 100 percent of Ren was completed on November 30, 1995.

94. On the same day that the AOSC Confidentiality Agreement was signed, July 6, 1995, AOSC at Wahlstrom's request sent to Wahlstrom at his Cobe offices in Lakewood, Colorado, numerous acquisition-related documents including AOSC's 1993-1995 audited financial statements, AOSC 1995-1998 internal/pro forma financial projections, and a cover letter from AOSC's then-chief executive officer referencing AOSC's growth and expansion plans. At that time Ren's main offices were located in Nashville, Tennessee.

95. On July 14, 1995, after Wahlstrom received AOSC's acquisition-related financial information, he disseminated it within his offices at Cobe to Lawson and three other Cobe employees. He moved to implement prompt consideration of the AOSC material, calling an internal meeting for July 24, 1995, to discuss strategy regarding acquiring AOSC, valuation of AOSC, due diligence, and related issues relevant to an acquisition of AOSC.

96. After reviewing the above-described financial information about AOSC and having communications with Dr. Spira, Wahlstrom proposed an acquisition of AOSC as follows. Wahlstrom proposed to Dr. Spira an arrangement in which AOSC would obtain bids from others in the marketplace, and Wahlstrom's company would then meet or exceed the best serious bid in order to acquire AOSC. Dr. Spira testified that Wahlstrom told him, "we want to buy your company .... what do we have to do to buy your company." Wahlstrom said "I want to buy the company, I don't care what, go on out and find out what you want" as a price.

97. Dr. Spira elaborates: "The price is established by a third party . . . . So the price is whatever I can go out, if I go out and I find a guy willing to pay me \$60,000,000 for it, okay, they have to pay me \$60,000,000 or more, so that's where that price is."

98. Ren board member and Cobe vice-president/CFO Herbert Lawson was present for one or more Wahlstrom-Spira discussions in the summer of 1995 regarding the concept of meeting the highest bid in order to acquire AOSC. Lawson had discussed the subject himself with Spira and also negotiated with Spira for Cobe (on behalf of Ren) relative to the purchase of AOSC.

99. Lawson confirms that Cobe agreed in the Summer of 1995 to match the best offer AOSC could obtain from a third party. Lawson has testified:

Dr. Spira would have indicated that he could sell his company

to whomever at X price, and were we prepared to match that price. And in terms of any kind of a binding agreement, Mats Wahlstrom may very well have said something to the effect of, Well, I'm sure that if they've gone out and done the same due diligence we will, then whatever price they came up with may be very plausible and, yeah, we would very much like to make sure that we get this as opposed to that other company [getting it].

...  
Would I have entered into a discussion with Dr. Spira that were we seriously interested in the company? Yes. Did we think that we would pay for it whatever others or match a reasonable offer for the company? Yes, I would have said that.

100. Lawson has testified that he, like Wahlstrom, acted for Cobe and Ren in his dealings with AOSC.

101. Having heard the Cobe proposal, Dr. Spira responded on behalf of AOSC in the Summer of 1995 by requesting that Cobe "put something on the table" as earnest money to confirm the arrangement. Dr. Spira reports that Wahlstrom responded, "no problem". Spira proposed that "\$3,000,000 will do it," and this amount was agreed on.

102. Thus by August or early September, 1995, before the September 19, 1995 commencement of the Cobe/Gambro tender offer to buy out Ren's minority shareholders, Cobe on Ren's behalf had entered into an agreement with AOSC to complete an acquisition of AOSC by meeting the best offer that AOSC could obtain. This agreement was subsequently confirmed in writing on September 15, 1995, in a so-called "Stock Option Agreement" (hereafter, "AOSC Stock Option Agreement"), also before the Ren tender offer's

commencement. The AOSC Stock Option Agreement also confirmed Cobe's agreement to pay AOSC \$3,000,000 as a deposit. The AOSC Stock Option Agreement contained a confidentiality provision generally barring disclosure of its terms.

103. The AOSC Stock Option Agreement stated that Cobe "shall have a first right of refusal to acquire an equity interest in American on the same terms as are offered American in good faith by a qualified third party buyer, exercisable within 30 days after receipt of notice of such terms. Should Cobe elect not to exercise its first right of refusal, American shall be free for a period of 90 days thereafter to consummate the transaction on the terms presented to Cobe." The \$3,000,000 would be required to be repaid if an acquisition was not completed.

104. Cobe CFO/Ren board member Lawson had forwarded an initial draft of the AOSC Stock Option Agreement to AOSC on or before September 6, 1995. September 8 was four days before the Ren Board of Directors met to consider Cobe's tender offer proposal for Ren's minority shares; eleven days before the September 19, 1995, Cobe tender offer commenced; several weeks before the October 17, 1995, closing date of the tender offer; and significantly before the November 30, 1995, completion of the subsequent merger under which Ren became a wholly-owned Cobe subsidiary.

105. The \$3,000,000 payment to AOSC under the terms of the AOSC Stock Option Agreement was wire-transferred by Cobe to AOSC on September 18, 1995.



106. The AOSC Stock Option Agreement was consummated on September 15, 1995, on Ren's behalf by Cobe to "lock up" AOSC as corporate acquisition for Ren. "The intent behind that [the AOSC Stock Option Agreement] would be to lock up the target [AOSC] so that they couldn't sell to anybody else," and "so it [AOSC] could be acquired", Lawson has testified.

107. Cobe in entering into the AOSC Stock Option Agreement on Ren's behalf wanted to demonstrate their seriousness about their previously stated firm intention to acquire AOSC. Lawson has testified:

Q. Was the purpose of the Stock Option Agreement or a purpose of the Stock Option Agreement to demonstrate to AOSC COBE's seriousness relative to intending to acquire AOSC?

A. Yes.

Q. To demonstrate it to AOSC, correct?

A. Uh-huh.

Q. You got to say "yes" for the record.

A. Yes. Yes.

108. Relative to Cobe confirming its expectation about completing the acquisition of AOSC (through Ren) through the payment of the \$3,000,000 earnest money deposit, Lawson states:

Q. ... If it [Cobe] or REN -- if it didn't intend directly or for REN to complete an acquisition of AOSC, would it have paid that money [the \$3 million paid to AOSC under the AOSC Stock Option Agreement]?

A. I should probably rephrase my answer to say I would think there was a reasonable expectation. It [the Stock Option Agreement and \$3 million payment] was made on a

reasonable expectation that an acquisition would occur. But it was by no means a definitive conclusion that an acquisition would occur. Yeah, we would advance that kind of money on that basis.

Q. And the difference between the reasonable expectation and definitive conclusion would be signified by what or mean what?

A. Purely a judgment call. In other words, we would not loan or advance them that sort of money simply as a stalling device.

109. After Cobe cemented the arrangement with AOSC, it naturally took AOSC time to go bid up its price in the marketplace. This time lag helped enable Cobe/Gambro to complete the tender offer to buy out Ren's minority shareholders and make Ren a wholly-owned Cobe subsidiary, before having to complete a formal letter of intent or acquisition agreement with AOSC.

110. Neither the AOSC Confidentiality Agreement, nor the AOSC Stock Option Agreement, nor the underlying objective that Ren acquire AOSC were ever disclosed by Cobe or Gambro to Ren's minority shareholders.

111. To ensure that Ren's minority shareholders would not learn about AOSC during the tender offer, Cobe and Gambro also never disclosed the AOSC acquisition arrangement to the members of the Ren board other than Wahlstrom and Lawson, never disclosed it to the members of the special committee of non-Cobe-designee members of the Ren board appointed to consider Cobe's tender offer proposal and protect the minority shareholders' interests (hereafter, "the special committee") in the tender offer, never

disclosed it to the special committee's financial advisors or legal advisors (even though the advisors specifically asked for information about potential acquisitions), and never even disclosed it to the president of Ren.

#### AOSC OBTAINS BIDS

112. AOSC sought out a bid for Cobe (ultimately Ren) to match starting in August or September, 1995. On September 15, 1995, AOSC obtained a written offer from Welsh, Carson, Anderson & Stowe, a New York investment firm. Rather than negotiate with Welsh, Carson or sign the Welsh Carson offer letter, AOSC forwarded the Welsh, Carson offer to Wahlstrom. The purpose of obtaining the bid was not to negotiate a deal with Welsh, Carson, but to provide a benchmark price that Cobe/Ren would meet.

113. The Welsh, Carson offer proposed an acquisition transaction valued at \$62.5 million.

114. Near in time to the September 15, 1995, Welsh, Carson offer, Dr. Spira informed Wahlstrom that AOSC was receiving multiple significant proposals in a price range comparable to Welsh, Carson's offer, and sought reassurance that Wahlstrom's company would indeed comply with its contractual commitment to meet offers for an acquisition of AOSC, given bids in the \$50-\$60 million range.

115. Wahlstrom reassured Dr. Spira that his company would meet offers in the \$50-\$60 million range. Dr. Spira has testified that

"Mats [Wahlstrom] said, that's fine. We will meet it ... [Wahlstrom] knew he was going to pay those kind of numbers for it."

116. Dr. Spira has further testified:

I will say that COBE [through Wahlstrom] did give me assurances that those offers that I was getting from other people, that they were going to meet. Now that may not have been an offer, but that is an agreement, and I testified that that happened [that] way -- I said I don't think it was August, but I think it was September [1995] ....

COMPLETION BY REN OF THE  
ACQUISITION OF AOSC

117. In December, 1995, after the tender offer and the November 30, 1995, merger that made Ren a wholly-owned Cobe subsidiary and a private company, Wahlstrom from his Colorado office, on Cobe letterhead, forwarded an offer letter from Ren to AOSC, purporting to be signed by Ren's president, Mr. Centella. However, the signature is not Centella's.

118. Ultimately the acquisition by Ren of AOSC was completed in 1996 for approximately \$55.5 million. A few AOSC assets ultimately were not included in the deal, or the price would have been higher.

119. The disclosure obligations of Gambro, Cobe, and their representatives were violated from the Summer of 1995 through November 30, 1995. By November 30, 1995, all of the actionable wrongs and violations were complete. At no time through November 30, 1995, did Cobe or Gambro disclose to the Plaintiff shareholders of Ren the confirmed intention of Cobe/Gambro to have their Ren

subsidiary acquire AOSC.

GAMBRO AND COBE'S AFFIRMATIVE ACTIONS IN THE TENDER OFFER PROCESS  
TO ENSURE CONCEALMENT FROM REN'S MINORITY SHAREHOLDERS  
OF THE ARRANGEMENT TO ACQUIRE AOSC

120. In 1995, Ren's board of directors continued to be controlled by Cobe/Gambro, as Cobe was the 53 percent majority shareholder.

121. The Ren board at the time of the tender offer consisted of Wahlstrom, Lawson, Jan Gustavsson (also a Cobe board member and chief financial officer of Gambro), Centella, Dr. Jacobs and Dr. Kokko.

122. On July 13, 1995, the boards of directors of Gambro and Cobe approved an acquisition of all of the shares of Ren that Cobe did not already own, i.e., the shares owned by Ren's minority shareholders. Wahlstrom, Ren chairman of the board and Cobe president, was authorized to make a proposal to the Ren board.

123. Later on July 13, 1995, Wahlstrom, addressing the board of Ren in a specially called meeting, made Cobe's proposal to purchase all of Ren's minority shares. Wahlstrom called the special meeting for 7:00 p.m. at the O'Hare Airport Hilton in Chicago, on less than 12 hours notice.

124. The Ren board was not represented by outside counsel, much less one experienced in mergers and acquisitions, at the July 13, 1995, special meeting. Ren's inside counsel, general counsel Ralph Levy, who did attend, admits to having been inexperienced in

such matters in 1995. Cobe was represented at the July 13 Ren board meeting, by an experienced mergers and acquisitions attorney. Gambro and Cobe's mergers and acquisitions specialist, Peter Lyons, an attorney with Shearman & Sterling, a large New York law firm, attended at Mr. Wahlstrom's invitation and represented Cobe's interests at the meeting.

125. Four years before the 1995 tender offer, in connection with Cobe's initial purchase of stock in Ren in 1991, Cobe had agreed to the earlier-referenced noncompetition agreement restricting Cobe from competing with Ren in Ren's line of business, that of providing dialysis treatment. At the same time in 1991 Cobe also had agreed to a standstill agreement. Under the standstill agreement Cobe was prevented for five years from offering to acquire Ren stock or proposing to enter into any merger or business combination with Ren "unless specifically requested to do so in writing in advance by the Board of Directors of [Ren]."

126. Pursuant to the standstill agreement, the Cobe proposal made on July 13, 1995, could properly be made to Ren only if Cobe was specifically requested to do so in writing in advance by the board of directors of Ren.

127. Cobe's lawyer, Mr. Lyons, told the Ren board on July 13 that the first step in the tender offer approval process would be for the Ren board to waive the standstill agreement so that Cobe could make its offer.

128. Dr. Jacobs, one of the non-Cobe-affiliated Ren board

members, asked what would happen if the non-Cobe-affiliated Ren board members voted against waiving the standstill agreement. Cobe's lawyer told Jacobs that the Cobe-designee members of the Ren board would nonetheless still vote to waive it.

129. The Cobe designees on Ren's board did not abstain from the standstill-waiver vote, though in the past the Cobe-designee directors had abstained from voting on matters where Cobe had a direct interest.

130. Thus the standstill agreement was waived by the Ren board at the July 13, 1995, special meeting, and Cobe made its proposal to buy Ren's minority shares. In a July 13, 1995, letter, Wahlstrom on behalf of Cobe offered to acquire the remaining Ren shares Cobe did not already own in a cash merger for \$18 per share. The \$18 per share offer is referred to as the "Offer."

131. On July 14, 1995, Ren publicly disclosed that it had received the Offer; that the Offer represented an approximate 18% premium above the then-current market price; and that Ren's board had established a special committee of its independent directors to consider the terms of the offer and to make recommendations to the board.

132. The special committee, consisting of Drs. Jacobs and Kokko, retained a financial advisor, Alex. Brown & Sons, a large national investment firm, and a legal advisor, Mayer, Brown & Platt, a large Chicago law firm. The special committee's task was to evaluate Cobe's \$18 proposal for the purpose of ensuring fair

treatment of Ren's minority shareholders who would be asked to sell their stock.

133. Neither the special committee nor its legal or financial advisors were informed of the arrangement to acquire AOSC before the special committee made its final recommendation to the Ren board on September 12, 1995, relative to the tender offer, nor at any other time before the November 30, 1995, merger under which Ren became a 100 percent-owned Cobe subsidiary.

134. The special committee and its advisors negotiated with Cobe between August 28 to September 10, 1995, regarding to Cobe's \$18 tender offer price. Wahlstrom, Ren's board chairman, represented Cobe in the negotiations with the Ren special committee regarding the tender offer price. They negotiated a \$20 price. At no time during these negotiations did Wahlstrom mention AOSC, though by August 28 the agreement relative to Ren acquiring AOSC had been made.

135. On September 12, 1995, the full Ren board convened to act on a special committee recommendation to accept the Cobe proposal to purchase the outstanding shares of Ren for \$20 per share. At no time during this meeting did Wahlstrom or Lawson mention AOSC. The meeting was convened by conference call, eleven minutes after a special committee meeting in which the special committee resolved to make its recommendation.

136. At the September 12, 1995, meeting the Ren board unanimously approved the special committee recommendation to accept



\$20 per share pursuant to the Cobe offer. The Ren board met for a total of 25 minutes. The full board received a brief oral report from Alex. Brown, the special committee financial advisor, on the fairness of the tender offer price. Alex. Brown had not been informed of the agreement that Cobe on Ren's behalf had previously made relative to completing an acquisition of AOSC.

137. The board appears to have received no documents for review at the September 12, 1995 meeting. The minutes of the meeting also confirm no board discussion of the special committee recommendation of Cobe's \$20 tender offer proposal. Cobe vice-president/CFD and Ren board member Lawson, an attendee at the meeting, has testified that the Ren board merely "rubber-stamped" the special committee's recommendation.

138. Cobe controlled the conduct of the September 12 Ren board meeting, and its designees on the Ren board acted at the meeting on behalf of Cobe's interests, not Ren's or those of the Ren minority shareholders. Lawson saw himself at the meeting as representing the interests of Gambro and Cobe, not Ren, and observed the same to be true about Wahlstrom and Ren board member Gustavsson. Ren's president, Mr. Centella, also a Ren board member, saw Wahlstrom as pursuing Cobe's interests, not Ren's, in all of the meetings of the Ren board on Cobe's tender offer buyout proposal, including the September 12 meeting.

139. Wahlstrom in fact represented only Cobe and Gambro's interests in the tender offer. Wahlstrom has testified that he

believed "It was up to the special committee," as opposed to the other board members including him, "to represent Ren and the board."

140. The Ren board once again was not represented by outside counsel at the September 12 Ren board meeting, much less experienced mergers and acquisitions counsel. Once again Cobe's New York mergers and acquisitions counsel was present to represent Cobe's interests.

141. On September 19, 1995, the Cobe tender offer was announced. The offer was to purchase all of the outstanding shares of Ren that Cobe did not already own, i.e., 47 percent of Ren's shares, for \$20 per share.

142. As the plan to acquire AOSC was intentionally and fraudulently concealed by Cobe and Gambro from Ren's minority shareholders, Alex. Brown's opinion as to the fairness of the Cobe tender offer, and the communication announcing the tender offer on September 19, were rendered grossly and materially misleading and caused to contain numerous material misstatements of fact and material omissions, all of which deceived the minority shareholders.

143. Pursuant to the terms of the Plan of Merger dated October 30, 1995, regarding to the merger that would take place between Cobe's acquisition subsidiary and Ren after the close of the tender offer, Ren's shareholders were informed that each Ren share not tendered before the October 17, 1995 close of the tender offer

would be cancelled at 12:01, November 30, 1995, and converted automatically to a right to receive \$20 per share.

144. Most of the Plaintiffs tendered their Ren shares, which were then sold/transferred shortly after the October 17, 1995 close date of the tender offer. The stock of those who did not tender on or before October 17 was ultimately converted into a right to receive \$20 per share and on that basis was sold/transferred.

145. Cobe and Gambro were aware that during the pendency of Cobe's tender offer in September and October of 1995, any material change in information previously disclosed to Ren's minority shareholders regarding Ren and its prospects, including potential acquisitions by Ren of other companies, were required promptly to be disclosed to the minority shareholders in additional tender offer materials.

146. Cobe and Gambro also were aware during the tender offer's pendency in September and October of 1995 that Ren minority shareholders tendering their stock in the tender offer had the right to withdraw their tender any time prior to the tender offer's expiration date of midnight, October 17, 1995.

**COBE AND GAMERO'S CONTINUED AFFIRMATIVE ACTS  
OF FRAUDULENT CONCEALMENT AFTER THE  
TAKEOVER OF 100 PERCENT OWNERSHIP IN REN**

147. Cobe and Gambro, through Wahlstrom and Lawson, took many affirmative steps in 1995 to conceal from Ren's minority shareholders the pre-arranged acquisition of AOSC, as detailed

above. These affirmative steps continued after they had acquired 100 percent of Ren on November 30, 1995. After they owned Ren outright, the only purpose served by such continuing fraudulent concealment was to prevent wronged minority shareholders from discovering the Cobe/Gambro scheme to buy them out at a depressed price in the tender offer.

148. In a February 7, 1996, Ren board meeting after the Cobe/Gambro takeover in which the subject of formal approval to complete and close the AOSC acquisition came up, special committee members Drs. Jacobs and Kokko, and Mr. Centella, were still on the board. The presentation on AOSC was made by Wahlstrom and Lawson. In detailing the AOSC acquisition, Wahlstrom and Lawson continued to conceal from these directors the AOSC-related commitments and agreements that predated the tender offer.

149. Cobe/Gambro apparently concealed from Jacobs, Kokko, and Centella through March, 2000, the pre-tender offer commitments and agreements made with AOSC. Jacobs, Kokko, and Centella appear to have learned about them for the first time in their March, 2000, depositions.

150. Cobe/Gambro's affirmative steps to conceal their conduct have continued in the instant action and the companion action in this Court by Plaintiff Ginsburg (through a counterclaim) against Cobe/Gambro's wholly-owned subsidiary, Gambro Healthcare (the former Ren). Gambro Healthcare's legal affairs are managed by Cobe's general counsel, Ralph Levy, who holds the position for both

entities. Levy has been in charge of the defense of Cobe, Gambro, and Gambro Healthcare in the instant action, and in the companion action, since the actions' inception. Levy also was Ren's general counsel in 1995 during all of the relevant events in issue, and had communications with Dr. Spira.

151. Plaintiff Ginsburg served on Cobe and Gambro on May 6, 1998, a request for production of documents seeking "All documents evidencing, referring or relating to negotiation and consummation of an acquisition of American Outpatient Services [AOSC]."

152. Cobe and Gambro responded ultimately by representing to Plaintiff Ginsburg that Cobe and Gambro possessed no AOSC-related documents beyond what Plaintiff Ginsburg already had received from Gambro Healthcare. Before this Ginsburg had received from Gambro Healthcare, Cobe/Gambro's wholly-owned subsidiary, in the companion action to the instant action, just a binder containing documents relating to the final closing of the AOSC acquisition in 1996. In short, Cobe and Gambro represented to Plaintiff Ginsburg in response to the May 6, 1998 Request for Production that they possessed no documents relating to the AOSC acquisition other than the final closing binder.

153. When Cobe and Gambro made this representation to Plaintiff Ginsburg, they in fact had in their possession the July 6, 1995, AOSC Confidentiality Agreement; the September 15, 1995, AOSC Stock Option Agreement; and approximately one-thousand other pages of relevant AOSC-related documents. They only began

producing such documents in May, 2000, as described below.

154. Plaintiff Ginsburg had previously also served on Gambro Healthcare in the companion action to this action a request for production of documents seeking "All documents evidencing, referring or relating to negotiation and consummation of an acquisition of American Outpatient Services [AOSC]."

155. Notwithstanding Court Orders in the companion action on April 16, 1998, June 25, 1998, October 8, 1998, February 2, 1999, and April 8, 1999, including Orders threatening to strike Gambro Healthcare's pleadings, Gambro Healthcare also failed to produce any AOSC-related documents other than 1996 closing binder. Like Gambro and Cobe, it did not produce other AOSC-related documents until 2000, as described below.

156. On February 11, 2000, Dr. Spira produced AOSC-related documents in response to a Ginsburg subpoena served on him. In that production, Dr. Spira produced the AOSC Stock Option Agreement.

157. Only after Dr. Spira's production of the AOSC Stock Option Agreement on February 11, 2000 -- which confirmed in writing the pre-tender offer AOSC acquisition arrangement negotiated by Wahlstrom and Dr. Spira -- did Cobe, Gambro, and Gambro Healthcare start producing significant AOSC-related documents.

158. Gambro Healthcare produced a few documents after February 11, but it was not until May 5, 2000, that Cobe and Gambro finally produced significant documents relating to the Ren acquisition of

AOSC.

159. On January 27, 2000, Mats Wahlstrom was deposed. January 27 preceded the production by Dr. Spira on February 11 of the above-noted AOSC documents, and preceded the depositions of Dr. Spira and Herbert Lawson elaborating on the revelations contained in those AOSC documents. Wahlstrom in his deposition on January 27 directly contributed to the continuing affirmative concealment by Cobe and Gambro of their conduct. Wahlstrom testified on January 27 that at the time of the tender offer for Ren on September 19, 1995, neither Ren nor Cobe had any plans to acquire AOSC. Wahlstrom stated:

So we had made the [tender offer] bid for REN [on September 19, 1995], and I believe that, I believe that, most likely, I told Spira that we are not interested in pursuing anything in detail right now because we have too many other things to do. And if the opportunity is available in the future, fine, we'll take a look at it.

160. In fact, at the time of the tender offer, Wahlstrom had already told AOSC on behalf of Ren that he would meet the best serious offer that AOSC received; the AOSC Stock Option Agreement had been signed pursuant to which Cobe/Ren obtained a right of first refusal and expected to complete an acquisition of AOSC; AOSC already had been paid \$3,000,000 to assure it that Ren/Cobe would carry out its intention to acquire AOSC; AOSC had forwarded offers to Wahlstrom in the \$60,000,000 range; and Wahlstrom likely already had provided the requested reassurance to AOSC that Cobe/Ren would meet a price in this range in order to acquire AOSC.

161. Cobe and Gambro have willfully, intentionally, and with malice breached fiduciary duties and other common law and statutory duties owed to the plaintiff minority shareholders of Ren, ~~including the affirmative duty to disclose and not remain silent on matters~~ relevant to those duties; failed to exercise independent business judgment; acted to the detriment of Plaintiffs in order to benefit themselves in inducing Plaintiffs and other shareholders into selling their stock at an unfair price; and took innumerable affirmative steps to conceal, fraudulently, their conduct as described above.

162. All conditions precedent to the bringing of this action have been satisfied or waived.

COUNT I  
(Claim Under Florida Securities and Investor  
Protection Act)

163. Plaintiffs reallege paragraphs 1-162.

164. This claim is brought by Ginsburg; Robert Sonnenborn; Shelly Skolnick; Owen Rheingold as trustee for the Alyssa Rheingold Trust, and as trustee of the Rachel Rheingold Trust; Gastroenterology Consultants; Robert Janda; Betty Ginsburg as trustee of the Betty Ginsburg trust; Ira Pardo; Robert Colton; and Maurice Karr.

165. This Count sets forth a claim for damages for violations of the Florida Securities and Investor Protection Act (the "Florida Act"), Fla. Stat., Ch. 517.



166. In 1995, at the time of the above-described tender offer, Defendants were aware and on notice that Plaintiffs owned Ren stock as detailed in the "Parties" section above ("Plaintiffs' shares").

167. The subsequent transfer in 1995 of Plaintiffs' shares to Cobe through Ren Acquisition Corp., Cobe's wholly-owned subsidiary, pursuant to the Offer by Cobe for all outstanding Ren stock and the subsequent tender offer to purchase the stock commenced on September 19, 1995, along with events surrounding the negotiation and transfer of the stock, constitute an offer, sale, and purchase of a security within the Florida Act.

168. In the 1995 tender offer purchase of Plaintiffs' shares, Cobe and Gambro were persons purchasing a security in violation of the Florida Act, Fla. Stat. § 517.301(1)(a).

169. In connection with the purchase of Plaintiffs' shares, Cobe and Gambro violated § 517.301(1)(a) of the Florida Act by:

- a. deploying a device, scheme and artifice to defraud;
- b. obtaining property and money by means of untrue statements of material fact and omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and
- c. engaging in transactions, practices and a course of business which operated as a fraud or deceit; all in connection with the purchase of Plaintiffs' Ren stock.

170. Before and continuing through 1995, Cobe and Gambro, in connection with and in anticipation of their purchase of Plaintiffs' shares in 1995, violated § 517.301(1)(a) by:

- a. Secretly planning and negotiating acquisitions and investments, principally the acquisition of AOSC, but forestalling final execution in writing until after the tender offer and merger, without informing Ren shareholders such as Plaintiffs, as described in detail in paragraphs 58-162, above;
- b. Failing to disclose to Plaintiffs and the other Ren shareholders (i) the improper nature of the "request" made by Ren/Gambro Healthcare in July, 1995, to Cobe to make an acquisition proposal, and (ii) that the action of the Ren/Gambro Healthcare Board in making such a request to Cobe was prompted by the Cobe-designated board members acting as agents for Cobe and Gambro and contrary to the interests of Ren shareholders; and
- c. In the September, 1995, valuation of Ren's stock, failing to disclose to Plaintiffs and other Ren shareholders, or to adequately consider, the Defendants' secret acquisition strategy as described above, and failing to disclose other transactions involving Cobe and Ren/Gambro Healthcare;

all in an effort by Cobe and Gambro to mislead Plaintiffs and other Ren minority shareholders as to the true value of their stock, and ultimately to allow Cobe and Gambro to purchase the stock in 1995 at an unfair price, as described in paragraphs 58-162, above.

171. Cobe and Gambro directly participated and/or aided in making the purchase of Plaintiffs' stock that occurred in the 1995 tender offer, in violation of the Florida Act.

172. In reasonable and justifiable reliance on the misrepresentations and omissions of Cobe and Gambro in connection with the above-described fraudulent scheme, Plaintiffs' Ren stock was sold pursuant to the tender offer or sold or transferred thereafter in the conversion of non-tendered Ren shares to cash

that occurred in connection with the merger of Ren and Cobe's wholly-owned subsidiary.

173. Cobe and Gambro took affirmative steps to fraudulently conceal, and did fraudulently conceal, the fraud perpetrated against Plaintiffs, as described virtually throughout this Complaint. This fraudulent concealment included failing to disclose relevant and material information to Plaintiffs despite an affirmative duty to do so.

174. Defendants acted willfully, intentionally, maliciously, wantonly, and in reckless disregard for the rights and interests of Plaintiffs.

175. As a direct and proximate result of these violations of the Florida Act engaged in jointly by Cobe and Gambro, Plaintiffs have been damaged and damages are recoverable under the Florida Act. Fla. Stat. § 517.211.

WHEREFORE, Plaintiffs demands judgment as follows:

- (a) Awarding compensatory damages in excess of \$15,000 and otherwise to be determined at trial;
- (b) Awarding punitive damages, the amount of which will be determined at trial;
- (c) Awarding all costs and expenses incurred;
- (d) Awarding attorneys fees pursuant to Fla. Stat. § 517.211(6) and § 57.105;
- (e) Awarding prejudgment interest and all other interest to which Plaintiffs may be entitled; and

(f) Granting such other and further relief as the Court may deem appropriate.

COUNT II  
(Claim under Tennessee Securities Act)

176. Plaintiffs reallege paragraphs 1-162.

177. This Count sets forth a claim for damages for violations of the Tennessee Securities Act (the "Tennessee Act"), Tenn. Code Ann. § 48-2-101, et seq.

178. In 1995, at the time of the above-described tender offer, Defendants were aware and on notice that Plaintiffs owned Ren stock as described in the "Parties" section above ("Plaintiffs' shares").

179. The subsequent transfer in 1995 of Plaintiffs' shares to Cobe through Ren Acquisition Corp., Cobe's wholly-owned subsidiary, pursuant to the Offer by Cobe for all outstanding Ren stock and the subsequent tender offer to purchase the stock commenced on September 19, 1995, along with events surrounding the negotiation and transfer of the stock, constitute an offer, sale, and purchase of a security within the Tennessee Act.

180. In the 1995 tender offer purchase of Plaintiffs' shares, Cobe and Gambro were persons purchasing a security in violation of the Tennessee Act, Tenn. Code Ann. § 48-2-121.

181. In connection with the purchase of Plaintiffs' shares, Cobe and Gambro violated the Tennessee Act, Tenn. Code Ann. § 48-2-121(a) by:

- a. deploying a device, scheme and artifice to defraud;

- b. obtaining property and money by means of untrue statements of material fact and omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and
- c. engaging in transactions, practices and a course of business which operated as a fraud or deceit; all in connection with the purchase of Plaintiffs' Ren stock.

182. Before and continuing through 1995, Cobe and Gambro, in connection with and in anticipation of their purchase of Plaintiffs' shares in 1995, violated § 48-2-121(a) by:

- a. Secretly planning and negotiating acquisitions and investments, principally the acquisition of AOSC, but ~~forestalling~~ final execution in writing until after the tender offer and merger, without informing Ren shareholders such as Plaintiffs, as described in detail in paragraphs 58-162, above;
- b. Failing to disclose to Plaintiffs and the other Ren shareholders (i) the improper nature of the "request" made by Ren/Gambro Healthcare in July, 1995, to Cobe to make an acquisition proposal, and (ii) that the action of the Ren/Gambro Healthcare board in making such a request to Cobe was prompted by the Cobe-designated board members acting as agents for Cobe and Gambro and contrary to the interests of Ren shareholders; and
- c. In the September, 1995, valuation of Ren's stock, failing to disclose to Plaintiffs and other Ren shareholders, or to adequately consider the Defendants' secret acquisition strategy as described above, and failing to disclose other transactions involving Cobe and Ren/Gambro Healthcare;

all in an effort by Cobe and Gambro to mislead Plaintiffs and other Ren minority shareholders as to the true value of their stock, and ultimately to allow Cobe and Gambro to purchase the stock in 1995 at an unfair price, as described in paragraphs 58-162, above.

183. Cobe and Gambro directly participated and/or aided in making the purchase of Plaintiffs' stock that occurred in the 1995 tender offer, in violation of the Tennessee Act.

184. In reasonable and justifiable reliance on the misrepresentations and omissions of Cobe and Gambro in connection with the above-described fraudulent scheme, Plaintiffs' Ren stock was sold pursuant to the tender offer or sold or transferred thereafter in the conversion of non-tendered Ren shares to cash that occurred in connection with the merger of Ren and Cobe's wholly-owned subsidiary.

185. Cobe and Gambro took affirmative steps to fraudulently conceal, and did fraudulently conceal, the fraud perpetrated against Plaintiffs, as described virtually throughout this Complaint. This fraudulent concealment included failing to disclose relevant and material information to Plaintiffs despite an affirmative duty to do so.

186. Defendants acted willfully, intentionally, maliciously, wantonly, and in reckless disregard for the rights and interests of Plaintiffs.

187. As a direct and proximate result of these violations of the Tennessee Act engaged in jointly by Cobe and Gambro, Plaintiffs have been damaged and damages are recoverable under the Tennessee Act. Tenn. Code. Ann. § 48-2-122.

WHEREFORE, Plaintiffs demand judgment as follows:

(a) Awarding compensatory damages in excess of \$15,000

and otherwise to be determined at trial;

(b) Awarding punitive damages, the amount of which will be determined at trial;

(c) Awarding all costs and expenses incurred;

(d) Awarding attorneys fees pursuant to Tenn Code Ann. § 48-2-122, and Fla. Stat. § 57.105;

(e) Awarding prejudgment interest and all other interest to which Plaintiffs may be entitled; and

(f) Granting such other and further relief as the Court may deem appropriate.

**COUNT III**  
**(Fraudulent Misrepresentation (Fraud in the**  
**Inducement))**

188. Plaintiffs reallege paragraphs 1-162.

189. Defendants Cobe and Gambro intentionally and/or negligently made false representations of material facts, made untrue statements, and failed to disclose other material facts necessary to make other representations to Plaintiffs accurate, with respect to inducing the sale and purchase in 1995 of all outstanding Ren stock pursuant, including Plaintiffs' stock, pursuant to the proposal made by Cobe, Gambro's subsidiary.

190. Specifically, Defendants secretly planned and negotiated acquisitions and investments before the purchase of Plaintiffs' stock, principally the acquisition of AOSC, but forestalled final execution in writing and concealed them from Ren shareholders such

as Plaintiffs, as described in detail in paragraphs 58-162, above.

191. Defendants also failed to disclose to Plaintiffs and the other Ren shareholders (i) the improper nature of the "request" made by Ren/Gambro Healthcare in July, 1995, to Cobe to make an acquisition proposal, and (ii) that the action of the Ren/Gambro Healthcare board in making such a request was prompted by the Cobe-designated board members acting as agents for Cobe and Gambro and contrary to the interests of Ren shareholders.

192. In the September, 1995, valuation of Ren's stock, Defendants failed to disclose to Plaintiffs and the other Ren shareholders, or to adequately consider, the Defendants' secret acquisition strategy with respect to AOSC as described in detail above, and failed to disclose other transactions involving Cobe and Ren/Gambro Healthcare.

193. These misstatements and omissions of material fact by Defendants were made with the purpose and effect of inducing Plaintiffs to rely thereon in tendering their stock or in foregoing taking steps to avoid selling or transferring their stock and to agree to sell all such stock, pursuant to the offer by Cobe.

194. The Defendants knew or should have known the false and misleading nature of the foregoing material statements and omissions conveyed to Plaintiffs.

195. In reasonable and justifiable reliance upon the false and misleading statements and misleading omissions of these Defendants, Plaintiffs were induced to tender their stock or forego taking



steps to avoid selling or transferring their stock and to agree to sell all such stock, pursuant to the offer by Cobe.

196. Plaintiffs were unaware that the above-described representations were untrue when made, or that the Defendants had failed to disclose material facts, until after all of Plaintiffs' stock was sold or transferred to Cobe.

197. Defendants made the foregoing false and misleading statements and misleading omissions willfully, intentionally, maliciously, wantonly, and in reckless disregard for the rights and interests of Plaintiffs.

198. Cobe and Gambro took affirmative steps to fraudulently conceal, and did fraudulently conceal, the fraud perpetrated against Plaintiffs, as described virtually throughout this Complaint. This fraudulent concealment included failing to disclose relevant and material information to Plaintiffs despite an affirmative duty to do so.

199. As a direct and proximate result of the false and misleading statements and misleading omissions of Defendants, Plaintiffs have been damaged and injured, and are entitled to recover all damages sustained, rescissory damages, and all other gains, profits, and advantages obtained by the Defendants as a result of their unlawful acts.

WHEREFORE, Plaintiffs demand judgment against Defendants, jointly and severally, as follows:

(a) Awarding compensatory damages and rescissory damages in

excess of \$15,000 and otherwise to be determined at trial;

- (b) Awarding punitive damages, the amount of which will be determined at trial;
- (c) Awarding all costs and expenses incurred;
- (d) Awarding attorneys fees pursuant to Fla. Stat. § 57.105;
- (e) Awarding prejudgment interest and all other interest to which Plaintiffs may be entitled; and
- (f) Granting Plaintiffs such other and further relief as the Court may deem appropriate.

**COUNT IV  
(Conspiracy to Commit Fraud)**

200. Plaintiffs reallege paragraphs 1-162.

201. Defendants conspired and acted in concert with each other to defraud Plaintiffs as alleged in the previous count in this Complaint.

202. Defendants conspired by participating in a number of actions designed to assist in the commission of the fraud alleged in the previous count, including, among others, participating in and concealing the nature of Gambro and Cobe's investment and acquisition activities, principally involving AOSC, as described in detail in paragraphs 58-162, before the offer to buy all outstanding Ren stock; participating in and concealing the true nature of Gambro and Cobe's activities in initiating the offer to purchase all outstanding Ren stock; fraudently concealing their

wrongful conduct; and participating in other activities adverse to the interests of Plaintiffs.

203. Defendants acted willfully, intentionally, maliciously, wantonly, and in reckless disregard for the rights and interests of Plaintiffs.

204. As a direct and proximate result of the conspiratorial activities of Defendants, Plaintiffs have been damaged and injured, and are entitled to recover all damages sustained, rescissory damages, and all other gains, profits, and advantages obtained by these Defendants as a result of their unlawful acts.

WHEREFORE, Plaintiffs demand judgment against the Defendants, jointly and severally, as follows:

- (a) Awarding compensatory damages and rescissory damages in excess of \$15,000 and otherwise to be determined at trial;
- (b) Awarding punitive damages, the amount of which will be determined at trial;
- (c) Awarding all costs and expenses incurred;
- (d) Awarding attorneys fees pursuant to Fla. Stat. § 57.105;
- (e) Awarding prejudgment interest and all other interest to which Plaintiffs may be entitled; and
- (f) Granting Plaintiffs such other and further relief as the Court may deem appropriate.

COUNT V  
(Negligent Misrepresentation)

205. Plaintiffs reallege paragraphs 58-162.

206. Defendants Cobe and Gambro, intentionally and/or negligently made false representations of material facts, made untrue statements, and failed to disclose other material facts necessary to make other representations to Plaintiffs accurate, with respect to inducing the sale and purchase in 1995 of all outstanding Ren stock pursuant, including Plaintiffs' stock, pursuant to the proposal made by Cobe, Gambro's subsidiary.

207. Specifically, Defendants secretly planned and negotiated acquisitions and investments before the purchase of Plaintiffs' stock, principally the acquisition of AOSC, but forestalled final execution in writing and intentionally or negligently concealed them from Ren shareholders such as Plaintiffs, as described in detail in paragraphs 58-162 above.

208. Defendants also failed to disclose to Plaintiffs and the other Ren shareholders (i) the improper nature of the "request" made by Ren/Gambro Healthcare in July, 1995, to Cobe to make an acquisition proposal, and (ii) that the action of the Ren/Gambro Healthcare board in making such a request was prompted by the Cobe-designated board members acting as agents for Cobe and Gambro and contrary to the interests of Ren shareholders.

209. In the September, 1995, valuation of Ren's stock, Defendants failed to disclose to Plaintiffs and the other Ren shareholders, or to adequately consider, the Defendants' secret acquisition strategy with respect to AOSC as described in detail

above, and failed to disclose other transactions involving Cobe and Ren/Gambro Healthcare.

210. These misstatements and omissions of material fact by Defendants were made intentionally or negligently with the purpose and/or effect of inducing Plaintiffs to rely thereon in tendering their stock or in foregoing taking steps to avoid selling or transferring their stock and to agree to sell all such stock, pursuant to the offer by Cobe.

211. The Defendants knew or should have known the false and misleading nature of the foregoing material statements and omissions conveyed to Plaintiffs.

212. In reasonable and justifiable reliance upon the false and misleading statements and misleading omissions of these Defendants, Plaintiffs were induced to tender their stock or forego taking steps to avoid selling or transferring their stock and to agree to sell all such stock, pursuant to the offer by Cobe.

213. Plaintiffs were unaware that the above-described representations were untrue when made, or that the Defendants had failed to disclose material facts, until after all of Plaintiffs' stock was sold or transferred to Cobe.

214. Defendants made the foregoing false and misleading statements and misleading omissions willfully, intentionally, maliciously, wantonly, in reckless disregard for the rights and interests of Plaintiffs, and/or in a grossly negligent manner.

215. Cobe and Gambro took affirmative steps to fraudulently

conceal, and did fraudulently conceal, the fraud and misrepresentation perpetrated against Plaintiffs, as described virtually throughout this Complaint. This fraudulent concealment included failing to disclose relevant and material information to Plaintiffs despite an affirmative duty to do so.

216. As a direct and proximate result of the false and misleading statements and misleading omissions of Defendants, Plaintiffs have been damaged and injured, and are entitled to recover all damages sustained, rescissory damages, and ~~all other~~ gains, profits, and advantages obtained by the Defendants as a result of their unlawful acts.

WHEREFORE, Plaintiffs demand judgment against Defendants, jointly and severally, as follows:

- (a) Awarding compensatory damages and rescissory damages in excess of \$15,000 and otherwise to be determined at trial;
- (b) Awarding punitive damages, the amount of which will be determined at trial;
- (c) Awarding all costs and expenses incurred;
- (d) Awarding attorneys fees pursuant to Fla. Stat. § 57.105;
- (e) Awarding prejudgment interest and all other interest to which Plaintiffs may be entitled; and
- (f) Granting Plaintiffs such other and further relief as the Court may deem appropriate.

COUNT VI  
(Breach of Fiduciary Duty)

217. Plaintiffs reallege paragraphs 58-162.

218. By virtue of their positions as dominant shareholders and managers of Ren, the above-referenced Defendants had a special relationship with Plaintiffs, Ren shareholders, and owed to them fiduciary duties based thereon, including duties of loyalty, fair dealing, good faith, honesty and candor, including specifically, but not limited to:

- a. acting in the best interest of Ren shareholders such as Plaintiffs in the control and management of the business affairs of Ren;
- b. acting in complete good faith with Plaintiffs with respect to the sale of all of Plaintiffs' stock in Ren;
- c. disclosing fully all material facts relating to the business of Ren and its prospects regarding potential Ren investments and acquisitions, including with respect to AOSC;
- d. protecting Plaintiffs' interest in Ren;
- e. dealing fairly with Plaintiffs and not taking a position adverse to Plaintiffs in a manner which advances Defendants' own self-interests over the interests of Plaintiffs.

219. ~~These Defendants~~ breached their fiduciary duties to Plaintiffs by entering into a scheme of illegal conduct, ~~self-dealing and deception, as more fully~~ described in Paragraphs 58-162 above, which had the improper purpose and effect of depriving Plaintiffs of the full value of their stock in Ren.

220. In breaching their fiduciary duties, these Defendants

acted willfully, intentionally, maliciously, wantonly, and in reckless disregard for the rights and interests of Plaintiffs.

221. As a direct and proximate result of the unlawful conduct of these Defendants, Plaintiffs have been damaged and injured, and are entitled to recover all damages sustained, rescissory damages, and all other gains, profits, and advantages obtained by these Defendants as a result of their unlawful acts.

WHEREFORE, Plaintiffs demand judgment against these Defendants, jointly and severally, as follows:

- (a) Awarding compensatory and rescissory damages in excess of \$15,000 and otherwise to be determined at trial;
- (b) Awarding punitive damages, the amount of which will be determined at trial;
- (c) Awarding all costs and expenses incurred;
- (d) Awarding attorneys fees pursuant to Fla. Stat. § 57.105;
- (e) Awarding prejudgment interest and all other interest to which Plaintiffs may be entitled; and
- (f) Granting such other and further relief as the Court may deem appropriate.

COUNT VII  
(Conspiracy to Breach Fiduciary Duty)

222. Plaintiffs realleges paragraphs 1-162.

223. Defendants conspired and acted in concert with each other to breach the fiduciary duties owed to Plaintiffs as alleged in the previous count in this Complaint.



224. Defendants conspired by participating in a number of actions designed to assist in accomplishment of the conduct alleged in the previous count, including, among others, participating in and concealing the investment and acquisition activities of Cobe and Gambro, including with respect to AOSC, as described in detail in paragraphs 58-162 above, ~~before the offer to buy all outstanding Ren stock~~; participating in and concealing the true nature of Gambro and Cobe's activities in initiating the offer to purchase all outstanding Ren stock; and participating in other activities adverse to the ~~interests~~ of Plaintiffs.

225. Defendants acted willfully, intentionally, maliciously, wantonly, and in reckless disregard for the rights and interests of Plaintiffs.

226. Cobe and Gambro took affirmative steps to fraudulently conceal, and did fraudulently conceal, the breaches of fiduciary duty committed against Plaintiffs and the conspiratorial conduct relating to those breaches, as described virtually throughout this Complaint. This fraudulent concealment included failing to disclose relevant and material information to Plaintiffs despite an affirmative duty to do so.

227. As a direct and proximate result of the conspiratorial activities of Defendants, Plaintiffs have been damaged and injured, and are entitled to recover all damages sustained, rescissory damages, and all other gains, profits, and advantages obtained by these Defendants as a result of their unlawful acts.

WHEREFORE, Plaintiffs demand judgment against the Defendants, jointly and severally, as follows:

- (a) Awarding compensatory and rescissory damages in excess of \$15,000 and otherwise to be determined at trial;
- (b) Awarding punitive damages, the amount of which will be determined at trial;
- (c) Awarding all costs and expenses incurred;
- (d) Awarding attorneys fees pursuant to Fla. Stat. § 57.105;
- (e) Awarding prejudgment interest and all other interest to which Plaintiffs may be entitled; and
- (f) Granting such other and further relief as the Court may deem appropriate.

COUNT VIII  
(Constructive Fraud)

228. Plaintiffs reallege paragraphs 1-162.

229. Bambo and Cobe owed fiduciary duties to Plaintiffs by virtue of their majority stock ownership and the right to designate a majority of Ren's board, all as described above.

230. These Defendants owed fiduciary duties of good faith, loyalty, honesty, fair dealing, due care and candor to Ren shareholders, including Plaintiffs.

231. Through the above-described activities of these Defendants, which included various false and misleading statements and misleading omissions made to Plaintiffs as described in paragraphs 58-162 above, principally with respect to the

acquisition of AOSC, these Defendants improperly abused their duties under their fiduciary relationship with Plaintiffs and thereby constructively defrauded them.

232. Defendants acted willfully, intentionally, maliciously, wantonly, and in reckless disregard for the rights and interests of Plaintiffs.

233. Cobe and Gambro took affirmative steps to fraudulently conceal, and did fraudulently conceal, their fraudulent conduct against Plaintiffs; ~~as described virtually throughout~~ this Complaint. This fraudulent concealment included failing to disclose relevant and material information to Plaintiffs despite an affirmative duty to do so.

234. As a direct and proximate result of the unlawful conduct of these Defendants, Plaintiffs have been damaged and injured, and are entitled to recover all damages sustained, rescissory damages, and all other gains, profits, and advantages obtained by these Defendants as a result of their unlawful acts.

WHEREFORE, Plaintiffs demand judgment against these Defendants, jointly and severally, as follows:

- (a) Awarding compensatory damages and rescissory damages in excess of \$15,000 and otherwise to be determined at trial;
- (b) Awarding punitive damages, the amount of which will be determined at trial;
- (c) Awarding all costs and expenses incurred;

- (d) Awarding attorneys fees pursuant to Fla. Stat. § 57.105;
- (e) Awarding prejudgment interest and all other interest to which Plaintiffs may be entitled; and
- (f) Granting such other and further relief as the Court may deem appropriate. do

DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury on all issues triable by right.

Dated: June 1, 2001. ~

CONRAD & SCHERER

By:  0159638

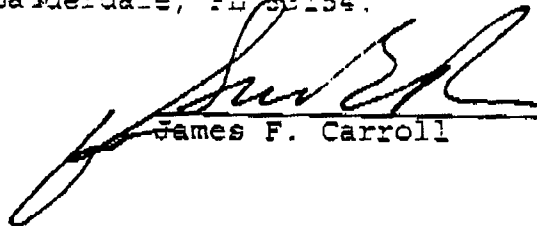
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof was served by U.S. mail on June 1, 2001, on Peter Goldman, Esq., Gillespie Goldman Kronengold & Farmer, P.A., Suite 511, 6550 North Federal Highway, Fort Lauderdale, FL 33308; Michael Gertzman, Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, New York 10019-6064; and Stuart R. Michelson, Esq., 200 SE 13th Street, Fort Lauderdale, FL 33154.

 0159638  
James F. Carroll

